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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of)
)
Joint Petition for Rulemaking to)
Establish Rules for Subscriber)
Access to Cable Home Wiring for)
the Delivery of Competing and)
Complimentary Video Services)

RM No. 8380

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

COMMENTS OF LIBERTY CABLE COMPANY, INC.

Liberty Cable Company, Inc. ("Liberty"), pursuant to Section 1.405 of the Commission's Rules, submits these Comments in response to the Joint Petition for Rulemaking filed on July 27, 1993 ("Petition") by the Media Access Project, the United States Telephone Association, and the Citizens for a Sound Economy Foundation ("Petitioners"). Liberty supports the Petitioners' proposal that the Commission adopt rules that give cable subscribers unrestricted access to cable home wiring. The Petitioners also suggest that the telephone home wiring rules should be used as a model for cable home wiring rules. While Liberty recognizes that consistency between the cable and telephone home wiring rules may be desirable in certain instances, Liberty is concerned that using the telephone rules as a model would not necessarily give alternate providers meaningful access to cable home wiring in multiple dwelling units ("MDUs").

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I. Cable Television Subscribers Should Have Access To Home Wiring Regardless Of Whether The Subscriber Has Terminated Service.

1. The Petitioners argue that cable television subscribers should have the same unrestricted access to home wiring as do telephone subscribers. Liberty, a satellite master antenna television ("SMATV") operator that is successfully overbuilding and competing head to head in New York City with a local franchised cable company,^{1/} supports this proposition. Currently, under the Commission's rules, cable subscribers have unrestricted access to home wiring only after termination of service.^{2/} In contrast, telephone subscribers have unrestricted access to inside wiring regardless of whether service is terminated because telephone subscribers own the telephone wire from the time it is installed.^{3/} Unrestricted access to cable home wiring is an important element in fostering consumer choice because cable subscribers will be able to use the cable in their homes to receive competing and complimentary video services. If the Petition is adopted, consumers will be able to use this cable wire for this purpose from the time the wire is installed.

^{1/} Liberty will also be among the first video programmers in the U.S. to test "video dialtone" technology beginning in 1994.

^{2/} 47 C.F.R. § 76.801.

^{3/} 47 C.F.R. § 68.213(b). Telephone subscribers were given unrestricted access to the inside wiring in an effort "to foster competition in the inside wiring installation and maintenance markets, to promote new entry into those markets, to produce cost savings which would be passed on to ratepayers, and to foster the development of an unregulated, competitive, telecommunications marketplace". In the Matter of Detariffing the Installation and Maintenance of Inside Wiring, CC Docket No. 79-105, Memorandum Opinion and Order, 1 FCC Rcd 1190, 1991 (1986).

2. Liberty understands the importance of unrestricted access to the cable wire because Liberty has experienced first hand the anticompetitive effects of the current cable home wiring rules. Time Warner, Inc. ("Time Warner"), Liberty's franchised competitor in New York which has a 99+% market share in New York City, has methodically used the existing cable rules to hinder Liberty's ability to serve new subscribers in MDUs.^{4/}

3. Specifically, on numerous occasions, Time Warner has questioned the adequacy of Liberty's proof that a subscriber wants to terminate Time Warner service. Since the current cable home wiring rules give ownership of the cable to the subscriber only after termination of service, Time Warner's actions often hinder Liberty's ability to complete the transition to Liberty service. As a result, potential Liberty customers often decide that it simply is not worth the trouble Time Warner creates to switch to Liberty.^{5/}

4. Time Warner's control of the cable to foster its own anticompetitive agenda is contrary to the efforts of both Congress and the Commission to encourage competition to cable by alternate

^{4/} Liberty currently has 20,000 subscribers all of whom reside in MDUs -- cooperatives, condominiums and apartment buildings. Liberty signs-up new subscribers by soliciting existing Time Warner subscribers and convincing them to switch to Liberty. Once a subscriber agrees to terminate his Time Warner service, Liberty will contact Time Warner in an effort to coordinate the hook-up of Liberty's service and the disconnection of Time Warner's service.

^{5/} See generally, Comments of Liberty in MM Docket No.92-260 at p. 3. It is Liberty's experience that if a subscriber believes that the transition will be inconvenient or burdensome, there is a good chance that he will not take Liberty service even if the Liberty service is less expensive.

providers.^{6/} Indeed, these events illustrate that real competition in the video marketplace will exist only if cable subscribers can conveniently access and utilize the services of alternate providers. One way to promote this objective is to give cable subscribers unrestricted access to cable home wiring from the time the wire is installed. Therefore, the Commission should grant the Petition to the extent that it fosters consumer choice.

II. Alternate Providers May Not Have Meaningful Access To The Cable Demarcation Point If The Telephone Home Wiring Rules Are Used As A Model For the Cable Home Wiring Rules.

5. The Petitioners suggest that the telephone home wiring rules could be used as a model for the cable home wiring rules, thereby implicitly opening the door for further discussion of the cable demarcation rule.^{7/} Altering the present cable demarcation point by using the telephone rules as a model concerns Liberty because alternate providers may not have meaningful access to cable home wiring in many MDUs.

6. Under the current cable home wiring rules which govern the disposition of wiring after a cable subscriber terminates service, the demarcation point is generally a point twelve inches outside

^{6/} See Cable Television Consumer Protection and Competition Act of 1992, Pub. L. No. 102-385, Sections 2(a)(6) and 2(b)(1-2), 106 Stat. 1460 (1992); see also In the Matter of Cable Television Consumer Protection and Competition Act of 1992: Cable Home Wiring, MM Docket No. 92-260, Report and Order at ¶ 11-12 (released February 2, 1993) ("Report and Order").

^{7/} See Petition at p.7.

each subscriber's premises. In its Petition for Reconsideration and Clarification in MM Docket No. 92-260 filed April 1, 1993, Liberty asked the Commission to reconsider its twelve inch rule as it applies to MDUs and asserted that the cable demarcation point should be located at a point outside the subscriber's apartment which an alternate provider can easily access without disrupting the interior of the subscriber's premises or the MDU. If the demarcation point is twelve inches, twenty inches or any other arbitrary distance outside a subscriber's apartment, alternate providers frequently will be unable to access the cable home wiring, particularly in older MDUs where the wiring is embedded in brick, concrete or cinder blocks, or concealed in inaccessible conduits or moldings which were never meant to be accessible. Without access to the cable home wiring, Liberty and other alternate providers cannot effectively compete against the entrenched cable monopolists in the video marketplace. This situation is contrary to the intent of the 1992 Cable Act and the Commission rules governing cable inside wiring.^{8/}

7. Liberty also questions whether the telephone home wiring rules are an appropriate model for cable home wiring in MDUs. Under the current telephone rules, either the local carrier or the MDU owner (depending on when the wiring was installed) may set the tele-

^{8/} Congress has asserted that the objective of the 1992 Cable Act is "to promote competition in the multichannel video marketplace and to provide protection for consumers against monopoly rates and poor customer service." S. Rep. No. 92, 102nd Cong. 2d Sess. (1992), reprinted in 1992 U.S.C.C.A.N. 1133. Similarly, the Commission has stated that the purpose of the cable inside wiring rules is "to allow subscribers to utilize the wiring with an alternative multichannel video delivery system." Report and Order at ¶ 3.

phone demarcation point(s) anywhere within the MDU up to twelve inches into a subscriber's apartment.^{2/} If the telephone home wiring model is applied in the cable environment, alternate providers will not be guaranteed meaningful access to the demarcation point; the existing cable operator or the MDU owner would have discretion to set the demarcation point at almost any point in the MDU including a point which does not provide alternate providers with access to the cable home wiring. Therefore, any use of the telephone model to set the cable demarcation point must guarantee access to alternate providers of video service.

8. Liberty is not unmindful that cable and telephone services are converging and there may be situations in the near future where consistency between the home wiring rules for video and voice services would be appropriate. For example, in those cases where a common carrier can provide video, voice and data services via a single incoming fiber, technology will most likely dictate that subscribers in a MDU access that wire at a single network interface device. Liberty has no problem with such a single demarcation point for each of the services transported via the common carrier as long as alternate providers are guaranteed access to the network interface device regardless of where that device is located in the MDU. But, in situations where there are two or more separate facilities providing video and voice services (e.g., a telephone company providing voice service and a cable operator providing video service),

^{2/} See 47 CFR § 68.3.

Liberty, at this time, does not see a specific need for the demarcation points to necessarily be at the same location.

III. Conclusion

In an effort to promote competition in the video marketplace, the Commission should initiate a rulemaking proceeding that gives cable subscribers a choice of video providers by guaranteeing all such providers unrestricted access to cable home wiring.

Respectfully submitted,

LIBERTY CABLE COMPANY, INC.

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December 21, 1993

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing "Comments of Liberty Cable Company, Inc." was served on each of the persons listed below this 21st day of December, 1993, by first class United States mail, postage prepaid.

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